

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In re

Determination of Rates and Terms for
Digital Performance of Sound Recordings
and Making of Ephemeral Copies to
Facilitate those Performances (*Web V*)

Docket No. 19-CRB-0005-WR
(2021-2025)

WRITTEN DIRECT TESTIMONY OF

John Strohm
President of Rounder Records

September, 2019

I. Background and Qualifications

1. My name is John Strohm. Since 2017, I have been the President of Rounder Records. I am a 30-year veteran of the independent music community, including 10 years as a full-time working musician and another 10 as an artist-side lawyer.
2. I'm originally from Bloomington, Indiana. My love of music started young, and I grew up listening to a lot of great folk, blues, and jazz records (including a number of Rounder titles) with my dad. I began my music career playing drum set in Indiana's punk rock scene. In 1985, when I was 18 years old, I left Indiana to attend Berklee College of Music in Boston. There, I switched my focus to the guitar and co-founded the alternative rock band Blake Babies with Juliana Hatfield and Freda Love. We released three full-length albums between 1987 and 1990, and toured in the U.S. and U.K. We later reunited in 2000 and our 2001 album *God Bless the Blake Babies* was released on the Rounder's Zöe imprint. In the 1990s, I fronted the bands Velo-Deluxe and Antenna, and released a solo album (I released another solo album in 2007). I played drums and guitar in the popular alternative rock band The Lemonheads in the late 1980s and mid-1990s.
3. After spending a decade as a working musician, I felt it was time to pursue a more stable, and less mobile, career. Ultimately, I decided to go back to school at the age of 30 and received my undergraduate degree from the University of Alabama at Birmingham in 2001, with a major in history and a minor in music technology.
4. I thought that law might provide me with a path back into the music business—albeit from a different angle; in 2004, I graduated *magna cum laude* from Samford University's Cumberland School of Law in Birmingham, where I served as Editor-in-Chief of the Cumberland Law Review. After law school, I worked in private practice negotiating agreements relating to music recording, publishing, and distribution. During that time, I

worked collaboratively with artists—including Alabama Shakes, The Civil Wars, Sturgill Simpson, Dawes, Julien Baker, and many others—to help build their careers and enable them to make music on their own terms. To that end, I worked with artists to determine how they might build momentum, whether to sign with a record label, and what record label to sign with. After discussing these issues, and developing an understanding of how much creative control the artist wanted to maintain over their music, I often negotiated contracts with managers and record labels, as well as band agreements, publishing agreements, and performance agreements. I also helped artists form companies to protect their assets. My ultimate goal was to assist artists in charting a course that enabled them to create art without compromising their vision.

5. In 2011, I joined the Nashville office of Loeb & Loeb LLP, as senior counsel, where I continued to negotiate deals for and otherwise assist artists. I remained there until 2017, when I became the President of Rounder.
6. One of the artists I worked closely with in my law practice was Bon Iver, the creative alter-ego for singer/songwriter/producer Justin Vernon. I worked with Vernon starting in 2007, while he was preparing for the release of his debut album. Bon Iver would later go on to win 2012 GRAMMY awards for Best New Artist and Best Alternative Music Album. Working with Vernon drove home for me that representing artists is different from representing corporate clients because your work involves managing the client's tolerance for creative risk. Vernon was an artist who seemed to care more about his creative freedom and his reputation in creative communities than in the bottom line. For example, he would often decline lucrative opportunities when it risked those freedoms. For Vernon, creating music was about self-expression and connecting people through music. As a former

professional artist navigating my new role as an artist advocate, it really helped me understand the unique challenges of working with creative artists, and I've carried that knowledge and sensitivity into my role as a label head.

7. Now, at Rounder, I bring my previous experiences and personal philosophy about music-making to the job every day. To that end, I emphasize that our label should: 1) keep its interference with the artist's creative process to a minimum; and 2) ensure that artists receive fair compensation, so that they can make a living through their art.
8. I serve on the boards of the Americana Music Association, Leadership Music, and The Porch, a literary nonprofit serving the creative writing community in Nashville.

II. Discussion

A. Rounder Records' Role in the Market

9. Rounder Records is a historic Americana and bluegrass record label. We continue to raise the bar for high-quality roots-based music, with critically acclaimed offerings from iconic artists like Gregg Allman, Steve Martin & Edie Brickell, Sarah Jarosz, Rush, and Vince Gill's Time Jumpers, as well as promising talents I'm With Her, Ruston Kelly, Billy Strings, and Samantha Fish, to name a few.
10. At the center of American roots music for nearly 50 years, Rounder Records was founded in 1970. The first influential record that we released was *J.D. Crowe & The New South*. The record was released in 1975, featured future stars Ricky Skaggs, Jerry Douglas, and Tony Rice, and revitalized bluegrass music. It also inspired a generation of artists, including Rounder's own Alison Krauss, the most decorated female artist in GRAMMY history. Overall, Rounder has won 54 GRAMMYS in its 49-year history.
11. Rounder has consistently demonstrated a commitment to nurturing and developing careers. A number of artists who got their start at Rounder are still recording with the label today,

including Jerry Douglas, Béla Fleck, and George Thorogood. And Rounder is also committed to the history of roots music. To that end, the label has worked hard to bring the music of the Carter Family, Lead Belly, Jelly Roll Morton, and Woody Guthrie back to vibrant life and released acclaimed anthologies from the Library of Congress and the Alan Lomax Collection.

12. Since 2014, Rounder has been wholly owned by The Concord Group.

B. The Process of Bringing Our Music to the World

13. One of my goals is to deliver mainstream success for talented artists in genres that are not typically represented on the pop charts. I'd like to briefly walk the Judges through the process we go through to find, record, release, and market our albums so that the world can hear the incredibly talented artists on our label.

14. *Finding and Developing Artists.* The first step in the music-making process is to find incredible artists who are going to connect with an audience. I'm the primary A&R person for Rounder, and I spend a lot of my time looking for great music, great songs, and great voices. I listen to a lot of demos and music online—including on streaming services such as SoundCloud—and attend shows in the Nashville area (and beyond). I also receive a large number of referrals from music business friends and contacts. Additionally, as a label president, I'm also looking for an artist who is the “whole package”—a functional, professionally-focused individual with a strong work ethic and a commitment to what we want to build together.

15. Data also plays a role in this process. Artists who are interested in signing with us often come to us with data from Spotify that makes the case for their popularity.

16. Once we have put in the work and identified an artist that we want to work with and invest in, we ask to meet with the artist, to discuss whether they are interested in signing with Rounder.
17. When we meet with artists, promotion to streaming services is a big part of the discussion. Twenty years ago, one of the main reasons artists wanted to sign with labels was because the labels knew how to promote to radio. Now artists are looking for labels that know how to promote to streaming services. As I discuss below, we at Concord do this well. We have an infrastructure in place for promotion to the services that, in my view, is essential to commercial success. I always explain the roles, resources, and business relationships of our digital team when I'm pitching to artists who we're interested in working with.
18. We do not end up signing all of these artists. That is because we are often competing with the major record companies and other independent record labels, not to mention artists whose managers and business team believe they can succeed without a label.
19. *Recording and Producing an Album.* Once we've found and signed an artist, it's typically time to record an album. We want our artists to develop and maintain their own creative voice. We also want to help our artists create great records that convey their artistic vision and stand the test of time. As a result, we are actively involved in the process of creating the records on our label, and strive to support our artists by helping them make every aspect of their record great, without compromising their creative expression.
20. It's worth noting that we bear the financial risk of producing and releasing an album. We typically pay for all the costs up front for recording, marketing, publicity, and promotion, and don't earn a profit unless and until those costs are recouped through physical or digital exploitation of the sound recording masters.

21. *Manufacturing and Distribution.* We handle the physical manufacturing of our albums.

We have a strong commitment to selling high-quality vinyl records, so we seek out the manufacturers who we believe can deliver the quality we need. We then deliver the physical product to our distributor.

22. Rounder is distributed through Universal Music Group (UMG). This means that UMG handles the bulk of our physical distribution,¹ and—more importantly nowadays—the digital aggregation and distribution to streaming services. We need the resources of a major label distributor to get our music out to the public—globally—in a way that will allow our music to compete with that of the majors. As part of our distribution deal with UMG, our content is covered under the terms of UMG’s digital licensing agreements with streaming services, such as Spotify and Apple. We value our ability to partner with UMG for our distribution.

23. *Marketing, Promotion & Publicity.* Concord Recorded Music Services is a centralized team that undertakes marketing and promotional efforts on behalf of each of Concord’s wholly-owned labels, including Rounder. One goal of those marketing, promotion, and publicity efforts is to grow “superfan” relationships: people who are likely to buy vinyl, show up at concerts, and build playlists that contain their favorite artist’s music or seek out a streaming station based on the artist, depending on the functionality of the streaming service. To engage the superfan, we focus on visual branding, creating compelling content, and advertising in spaces where they are spending their time online. We want to engage the superfan and keep them interested in our artists ten, twenty years from now.

¹ The one exception is that we have the right, for at least half of our artists, to sell merchandise, including vinyl records and CDs, directly to the fans of an artist through a web store that we set up and manage.

24. Marketing in the current age is constantly evolving. As mentioned, Rounder has access to a team of nine talented individuals at Concord Recorded Music Services who rely on state-of-the-art technology to market our music through digital advertising and social media. Recorded Music Services will work with our artists and a publicist to make a plan and to craft an authentic narrative, which goes out to the media (both new and traditional).
25. A great deal of our marketing is to the streaming services, with a particular focus on the top players. There is significant flux in terms of how music is marketed, and I'm thrilled to have the opportunity to work with a team that stays on the cutting-edge and understands the best way to market to the relevant streaming services. We devote considerable attention to Spotify and Apple, because of their size, and Amazon Music, because of its fast growth and focus on country and roots music. Ultimately, our goal is to leverage relationships with the services to get our content pushed to listeners. As I'll explain below, the best way of doing that is through playlisting.
26. The Concord Recorded Music Services team also handles marketing our music to radio. The radio stations we're initially focused on for developing acts tend to be genre-based or smaller, non-commercial and/or college radio stations; depending on the artist we may also market to commercial radio. While in the not-so-distant-past our promotional efforts only consisted of radio, now radio is just a subset of our efforts to promote streaming, vinyl sales, and concert ticket sales. We still believe that radio can have a substantial impact on a song's success, but we promote to radio alongside—and generally at the same time as—promotion to the streaming services.
27. We use data from Spotify to assist in our marketing efforts. This data shows—for example—how many are people hearing a song, what time of day people are listening, how

many plays a song is generating in different regions, etc. This is all helpful in developing an artist and gauging how we should focus our marketing and promotion efforts.

28. An example of an artist who exemplifies the Rounder sound and image is Ruston Kelly.

Kelly was a professional songwriter in Nashville, penning songs for commercial country singers such as Tim McGraw and the Josh Abbott band. He was also one of my clients when I was in private practice. A couple of years ago, he reinvented himself as a multi-genre singer-songwriter whose music spans the Americana/rock genres. Rounder released Kelly's 2018 album *Dying Star*, and is working with Kelly on a couple of planned releases, a covers-only EP and a full-length album for 2020. He is a mature artist who is exceptionally good at visual branding, leveraging social media, and building "buzz." We've worked with Kelly to develop a modern marketing strategy to draw in new listeners. For example, earlier this year we worked with Kelly to release a cover of Taylor Swift's pop-country hit "All Too Well," which premiered on *Billboard.com*. Swift herself then tweeted out an enthusiastic endorsement of the song. As a result of Kelly's talent and dedication, we've seen his success build and grow in the time we have worked together, and he is now headlining and selling out mid-size venues around the U.S. and the United Kingdom.

C. The Importance of Streaming Royalties to Our Business

29. Streaming royalties now represent the majority of our revenue. We have seen physical and digital sales decline over the last number of years, but streaming revenue has been on the rise.

30. I believe that the growth of streaming will benefit roots and Americana music. Historically, it has been challenging for artists in these genres to find mainstream success. There are

few large radio stations devoted to this music and obstacles to music discovery have inhibited the growth of the genres. Streaming has the potential to address these issues. The sophisticated discovery tools that are available on platforms like Spotify and Apple are incredibly valuable because they make it easier for people to find good music they might like. Moreover, the emergence of subscription services that enable users to find music on-demand means that a growing number of people have immediate access to our music. As streaming continues to grow and more people—especially in older demographics—are adopting the technology, there’s room for our music to gain traction in streaming and break into the mainstream. I also believe streaming has the potential to help grow the musical middle class, provided artists are fairly compensated.

31. As I noted above, one particularly effective and important way to promote the discovery of our artists is through the playlists offered on major streaming services, like Spotify, Apple, and Amazon Music Unlimited. Let me illustrate the importance of playlisting through an example from my personal experience as an artist-side lawyer. Several years ago, I was working with an unsigned local rock band in Nashville called Moon Taxi. They had a song that started to trend and index well on certain streaming services and, as a result, Spotify placed the track on its enormously consequential Today’s Top Hits playlist. Because that playlist reaches a very large audience, appearing on it produced a significant amount of revenue for the band. It also helped to generate interest from several record labels and the band ended up signing a deal with a major label shortly thereafter. In other words, although the playlist is called “Today’s Top Hits,” Spotify is exercising its editorial authority to program tracks that *aren’t yet* hits. And by doing so, Spotify is turning those tracks *into* hits. At Rounder, our hope is that the streaming services will help move our

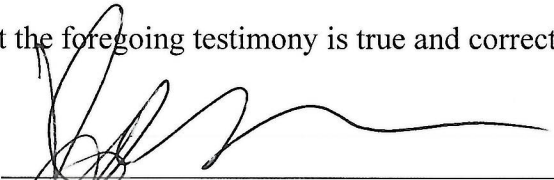
music into the mainstream. The larger audience playlists on the larger streaming services are perhaps the best way to do that.

32. Although we spend time maintaining and building relationships with all of the streaming services, we currently spend the most time on Spotify, Apple, and Amazon Music. We focus on Spotify and Apple because they are the two largest streaming services. As for Amazon Music, it has a strength in and emphasis on country music, given its demographics. As a result, it has been consistently featuring roots and Americana music—Rounder’s genres—to its listeners. We see this as a win-win for us and for Amazon; our music has a greater chance of becoming successful on Amazon and Amazon is able to nurture its listener base of country music fans who might be interested in hearing music in related genres. We believe it is worth making an effort to promote music to Amazon’s curation team because Amazon is emphasizing our focal genres in their playlisting. As an example, Ruston Kelly’s track “All Too Well,” which I described above, was an Amazon original that we pitched to Amazon with Kelly’s manager. This means that Amazon gave Kelly a budget to record the track and then Amazon held the exclusive right to the recording for a limited period of time. Now that the period of exclusivity has run, we are able to release “All Too Well” and it will appear on Ruston’s forthcoming EP, as well as all the streaming services. We believed that Amazon’s provision of the recording costs and marketing and promotion for the track was worth the limited period of exclusivity that came with it.
33. Ultimately, services like Spotify, Apple, and Amazon Music generate a substantial amount of our revenue and provide important opportunities to break an artist. As a result, we view those services as crucial to the label and our artists. Based on my experience, I am confident that our artists agree. Maintaining a strong working relationship with the major

subscription services is therefore critical. The alternative could have very severe financial implications, and affect our ability to sign, develop, and retain artists. For example, if UMG removed its content—which would include its distributed content, like Rounder—from Spotify for any significant period of time it would be catastrophic from a revenue-loss and artist-relations perspective.

I declare under penalty of perjury that the foregoing testimony is true and correct.

Date: 9/23/19



John Strohm

Proof of Delivery

I hereby certify that on Tuesday, March 10, 2020, I provided a true and correct copy of the Written Direct Testimony John Strohm to the following:

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Signed: /s/ Steven R. Englund